



POSTAL SERVICE

39 CFR Parts 233 and 273

Inspection Service Authority; Civil Monetary Penalty Inflation Adjustment

AGENCY: Postal Service™.

ACTION: Interim final rule.

SUMMARY: This document updates postal regulations by implementing inflation adjustments to civil monetary penalties that may be imposed under consumer protection and mailability provisions enforced by the Postal Service pursuant to the Deceptive Mail Prevention and Enforcement Act and the Postal Accountability and Enhancement Act, as well as the civil monetary penalty that may be imposed by the Postal Service for false claims and statements under the Program Fraud Civil Remedies Act. These adjustments are required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This document includes the adjustments for 2023 for the statutory civil monetary penalties subject to the 2015 Act and all necessary updates authorized by the 2015 Act for regulatory civil monetary penalties.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114-74, 129 Stat. 584, amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Public Law 101-410, 104 Stat. 890 (28 U.S.C. 2461 note), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. Section 3 of the 1990 Act specifically includes the Postal Service in the definition of “agency” subject to its provisions.

Beginning in 2017, the 2015 Act requires the Postal Service to make an annual adjustment for inflation to civil penalties that meet the definition of “civil monetary penalty” under the 1990 Act. The Postal Service must make the annual adjustment for inflation and publish the adjustment in the Federal Register by January 15 of each year. The Postal Service has not completed the annual adjustments for the civil monetary penalty that may be imposed under the Program Fraud Civil Remedies Act. In order to satisfy the annual adjustment requirement, the Postal Service is making all annual adjustments at this time. Each penalty will be adjusted as instructed by the Office of Management and Budget (OMB) based on the Consumer Price Index (CPI-U) from the most recent October. OMB has furnished detailed instructions regarding the annual adjustment for 2023 in memorandum M-23-05, *Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 15, 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf>. This year, OMB has advised that an adjustment multiplier of 1.07745 will be used. The new penalty amount must be rounded to the nearest dollar.

The 2015 Act allows the interim final rule and annual inflation adjustments to be published without prior public notice or opportunity for public comment.

Adjustments to Postal Service Civil Monetary Penalties

Civil monetary penalties may be assessed for postal offenses under sections 106 and 108 of the Deceptive Mail Prevention and Enforcement Act, Public Law 106-168, 113 Stat. 1811, 1814 (see, 39 U.S.C. 3012(a), (c)(1), (d), and 3017 (g)(2), (h)(1)(A)); and section 1008 of the Postal Accountability and Enhancement Act, Public Law 109-435, 120 Stat. 3259-3261 (see, 39 U.S.C. 3018 (c)(1)(A)). The statutory civil monetary penalties subject to the 2015 Act and the amount of each penalty after implementation of the annual adjustment for inflation are as follows:

39 U.S.C. 3012(a) – False Representations and Lottery Orders

Under 39 U.S.C. 3005(a)(1)-(3), the Postal Service may issue administrative orders prohibiting persons from using the mail to obtain money through false representations or lotteries. Persons who evade, attempt to evade, or fail to comply with an order to stop such prohibited practices may be liable to the United States for a civil penalty under 39 U.S.C. 3012(a). The regulations implemented pursuant to this section currently impose a \$79,481 penalty for each mailing less than 50,000 pieces, \$158,958 for each mailing of 50,000 to 100,000 pieces, and \$15,897 for each additional 10,000 pieces above 100,000 not to exceed \$3,179,178. The new penalties will be as follows: a \$85,637 penalty for each mailing less than 50,000 pieces, \$171,269 for each mailing of 50,000 to 100,000 pieces, and \$17,128 for each additional 10,000 pieces above 100,000 not to exceed \$3,425,405.

39 U.S.C. 3012(c)(1) – False Representation and Lottery Penalties in Lieu of or as Part of an Order

In lieu of or as part of an order issued under 39 U.S.C. 3005(a)(1)-(3), the Postal Service may assess a civil penalty. Currently, the amount of this penalty, set in the implementing regulations to 39 U.S.C. 3012(c)(1), is \$39,740 for each mailing that is less than 50,000 pieces, \$79,481 for each mailing of 50,000 to 100,000 pieces, and an additional \$7,948 for each additional 10,000 pieces above 100,000 not to exceed \$1,589,589. The new penalties will be \$42,818 for each mailing that is less than 50,000 pieces, \$85,637 for each mailing of 50,000 to 100,000 pieces, and an additional \$8,564 for each additional 10,000 pieces above 100,000 not to exceed \$1,712,703.

39 U.S.C. 3012(d) – Misleading References to the United States Government; Sweepstakes and Deceptive Mailings

Persons may be liable to the United States for a civil penalty under 39 U.S.C. 3012(d) for sending certain deceptive mail matter described in 39 U.S.C. 3001((h)-(k), including:

- Solicitations making false claims of Federal Government connection or approval;

- Certain solicitations for the purchase of a product or service that may be obtained without cost from the Federal Government;
- Solicitations containing improperly prepared “facsimile checks”; and
- Certain solicitations for “skill contests” and “sweepstakes” sent to individuals who, in accordance with 39 U.S.C. 3017(d), have requested that such materials not be mailed to them.

Currently, under the implementing regulations, this penalty is not to exceed \$15,897 for each mailing. The new penalty will be \$17,128.

39 U.S.C. 3017(g)(2) – Commercial Use of Lists of Persons Electing not to Receive Skill Contest or Sweepstakes Mailings

Under 39 U.S.C. 3017(g)(2), the Postal Service may impose a civil penalty against a person who provides information for commercial use about individuals who, in accordance with 39 U.S.C. 3017(d), have elected not to receive certain sweepstakes and contest information. Currently, this civil penalty may not exceed \$3,179,178 per violation, pursuant to the implementing regulations. The new penalty may not exceed \$3,425,405 per violation.

39 U.S.C. 3017(h)(1)(A) – Reckless Mailing of Skill Contest or Sweepstakes Matter

Currently, under 39 U.S.C. 3017(h)(1)(A) and its implementing regulations, any promoter who recklessly mails nonmailable skill contest or sweepstakes matter may be liable to the United States in the amount of \$15,897 per violation for each mailing to an individual. The new penalty is \$17,128 per violation.

39 U.S.C. 3018(c)(1)(A) – Hazardous Material

Under 39 U.S.C. 3018(c)(1)(A), the Postal Service may impose a civil penalty payable into the Treasury of the United States on a person who knowingly mails nonmailable hazardous materials or fails to follow postal laws on mailing hazardous materials. Currently, this civil penalty is at least \$344, but not more than \$137,060 for each violation, pursuant to the implementing regulations. The new penalty is at least \$371, but not more than \$147,675 for each violation.

Adjustments to Regulatory Postal Service Civil Monetary Penalties

In October 1986, Congress enacted the Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812. The Program Fraud Civil Remedies Act established an administrative remedy against any person who makes, or causes to be made, a false claim or written statement to certain Federal agencies. The Act requires each covered agency to promulgate rules and regulations necessary to implement its provisions. The Postal Service's implementing regulations are found in part 273 of title 39, Code of Federal Regulations. The current penalty amount is \$12,537. The new penalty amount is \$13,508.

List of Subjects

39 CFR Part 233

Administrative practice and procedure, Banks, Banking, Credit, Crime, Infants and children, Law enforcement, Penalties, Privacy, Seizures and forfeitures.

39 CFR Part 273

Administrative practice and procedure, Claims, Fraud, Penalties.

For the reasons set out in the preamble, the Postal Service amends 39 CFR parts 233 and 273 as follows:

PART 233—INSPECTION SERVICE AUTHORITY

1. The authority citation for part 233 continues to read as follows:

AUTHORITY: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1), 3012, 3017, 3018; 12 U.S.C. 3401-3422; 18 U.S.C. 981, 983, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104-208, 110 Stat. 3009; Secs. 106 and 108, Pub. L. 106-168, 113 Stat. 1806 (39 U.S.C. 3012, 3017); Pub. L. 114-74, 129 Stat. 584.

§ 233.12 [Amended]

2. In § 233.12:

a. In paragraph (a), remove “\$79,481” and add in its place “\$85,637”, remove “\$158,958” and add in its place “\$171,269”, remove “\$15,897” and add in its place “\$17,128”, and remove “\$3,179,178” and add in its place “\$3,425,405”;

b. In paragraph (b), remove “\$39,740” and add in its place “\$42,818”, remove “\$79,481” and add in its place “\$85,637”, remove “\$7,948” and add in its place “\$8,564”, and remove “\$1,589,589” and add in its place “\$1,712,703”;

c. In paragraph (c)(4), remove “\$15,897” and add in its place “\$17,128”;

d. In paragraph (d), remove “\$3,179,178” and add in its place “\$3,425,405”;

e. In paragraph (e), remove “\$15,897” and add in its place “\$17,128”; and

f. In paragraph (f), remove “\$344” and add in its place “\$371” and remove “\$137,060” and add in its place “\$147,675”.

PART 273—ADMINISTRATION OF PROGRAM FRAUD CIVIL REMEDIES ACT

3. The authority citation for part 273 continues to read as follows:

AUTHORITY: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

4. In § 273.3, in paragraph (a)(1)(iv), add a sentence to the end of the paragraph to read as follows:

§ 273.3 Liability for false claims and statements.

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(a) ***

(1) ***

(iv)***As adjusted under Public Law 114-74, the penalty is \$13,508 per claim.

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Tram Pham,

Attorney, Ethics & Legal Compliance.